[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N-79-909]

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

AGENCY: Department of Housing and Urban Development; Assistant Secretary for Community Planning and Development.

ACTION: Notice of application submission date—Financial Settlement Fund.

FOR FURTHER INFORMATION CONTACT:

Peter Rowan, 202-755-1871.

Pursuant to Section 570.484, Chapter V, Title 24 of the Code of Federal Regulations which requires the establishment of submission deadlines for the filing of applications for Categorical Program Settlement Grants, the Secretary is establishing the application date with respect to grants for funding the financial settlement, and to the extent feasible, the completion of projects assisted under the categorical grant programs terminated by Congress in 1974.

Accordingly, applications are invited from units of general local Governments in which projects assisted under the Urban Renewal Program are located which cannot be financially settled or completed, without supplemental financial assistance. To be considered for funding at this time, complete applications must be received by the appropriate HUD Area Office by close of business, February 28, 1979. For full program information see Subpart H. Part 570, Chapter V, Title 24 of the Code of Federal Regulations, which was published June 6, 1978, 43 FR 24656.

Issued at Washington, D.C., January 18, 1979.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development

[FR Doc. 79-2616 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART IV

DEPARTMENT OF TRANSPORTATION

Coast Guard

■

SUSPENSION AND REVOCATION PROCEEDINGS

Temporary Documents

[4910-14-M]

Title 46—Shipping

CHAPTER 1—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 78-024]

PART 5—SUSPENSION AND REVOCATION PROCEEDINGS

Temporary Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the regulations governing the issuance of temporary documents during the pendency of appeals of suspension and revocation orders to the Commandant and revokes redundant regulations concerning the release of records. The Administrative Law Judge hearing the case presently forwards each denied request for a temporary document the Commandant for final action. This amendment makes the Administrative Law Judge's decisions concerning the issuance of a temporary document final in the absence of further appeal of that decision, and eliminates the necessity of the Commandant reviewing each denial of a temporary document.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Commander Charles H. King, Jr., Office or Merchant Marine Safety (G-MMI-2/82), Room 8205, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202 426-2215).

SUPPLEMENTARY INFORMATION: Since this is a matter relating to agency procedure and practice, under 5 U.S.C. 553(a)(2) notice and public procedure are unnecessary. Under 5 U.S.C. 553(d)(3), the amendments may be made effective in less than thirty days after publication in the FEDERAL REGISTER since they clarify appeal procedures for merchant seamen. This rule has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (43 FR 9582, March 8, 1978). A final evaluation has been prepared, and has been included in the public docket.

DRAFTING INFORMATION

The principal persons involved in drafting this amendment are: Commander Charles H. King, Jr., Project Manager, Office of Merchant Marine Safety, and Edward J. Gill, Jr., Project Attorney, Office of the Chief Counsel.

DISCUSSION OF AMENDMENT

A merchant seaman who has had his document suspended or revoked by an order of an Administrative Law Judge may request the issuance of a temporary document that would be valid during the pendency of his appeal of the suspension or revocation to the Commandant. The change to the regulation will make the Administrative Law Judge decision denying the issuance of a temporary document final in the absence of an appeal of that decision. If the Administrative Law Judge's does not authorize the issuance of a temporary document, the merchant seaman may appeal to the Commandant requesting that the Commandant review the Administrative Law Judge's decision concerning the temporary document. The amendment will relieve the Commandant of the burder of reviewing every denial of a request for a temporary document. The Commandant will now review only those cases in which an appeal has been made by the seaman.

The regulations dealing with the release of records (46 CFR 5.55) are being deleted because the substance of the regulations is in Title 49 of the Code of Federal Regulations and this reference is set out in 46 CFR 5.50-1. It is unnecessary and superfluous to have two sets of regulations on the same subject.

Accordingly, Part 5 of Title 46 of the Code of Federal Regulations is amended as follows:

1. By revising § 5.30-15(a) and (b) to read as follows:

§ 5.30-15 Temporary documents.

(a) A person who has appealed from a decision suspending or revoking a document and/or license may file a written request for a temporary document and/or license with the Administrative Law Judge who rendered the decision, or with any Officer in Charge, Marine Inspection, for forwarding to such Administrative Law Judge. Action on the request will be taken by the Administrative Law Judge. However, if the hearing transcript has been forwarded to the Commandant, the request for a temporary document is forwarded by the Administrative Law Judge to the Commandant for final action.

(1) If the request for a temporary document is denied by the Administrative Law Judge, the individual denied the document may appeal the denial, in writing, to the Commandant within 10 days.

(b) The Administrative Law Judge or the Commandant grants the request for a temporary document based on:

(1) Whether the service of the individual involved on board a vessel at the time of the request, or immediately thereafter, is compatible with the requirements for safety of life and property at sea.

(2) The individual's prior record.

* * * * *

Subpart 5.55 [Deleted]

2. By deleting Subpart 5.55.

(Sec. 633, 63 Stat. 545, as amended (14 U.S.C. 633); R.S. 4450 (46 U.S.C. 239); sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b))

Dated: January 20, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 79-2668 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART V

DEPARTMENT OF ENERGY

Economic Regulatory Administration

■

AMENDMENTS TO IMPOSE THE ENTITLEMENT OBLIGATION ON THE FIRST PURCHASE OF PRICE CONTROLLED DOMESTIC CRUDE OIL

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 211, 212]

[Docket No. ERA-R-78-12]

AMENDMENTS TO IMPOSE THE ENTITLEMENT OBLIGATION ON THE FIRST PURCHASE OF PRICE-CONTROLLED DOMESTIC CRUDE OIL

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing to amend its domestic crude oil allocation (or entitlements) program to impose the entitlement purchase obligation on the first purchase of price-controlled domestic crude oil, regardless of whether the purchaser is a refiner, reseller, or some other user of crude oil.

Under this proposal, the ERA would announce in advance of each calendar quarter the entitlement prices for lower tier and uppper tier crude oil, respectively for each month of the quarter. Since all transactions after the first sale would reflect the entitlement obligation, resellers of crude oil would not be required to certify to their purchasers the volumes and per-barrel price of lower tier, upper tier, and exempt crude oil sold in each transaction, thus reducing the current regulatory burden on both resellers and refiners and the potential evasion of price controls downstream of the producer. In addition, shifting the entitlement purchase obligation from refiners to first purchasers would automatically assure that entitlement obligations attach to nonrefining uses of price-controlled domestic crude oil.

This proposal is intended to be the first phase in ERA's effort to simplify the crude oil price controls by eventually using the entitlements program, rather than the ceiling price regulations, to regulate first sale prices of domestic crude oil.

DATES: Comments by March 23, 1979, 4:30 p.m. Requests to speck by March 2, 1979, 4:30 p.m. Hearing dates: Denver, Colorado hearing: March 8, 1979, 9:30 a.m.; Washington, D.C. hearing; March 13, 1979, 9:30 a.m.

ADDRESSES: All comments and requests to speak for Washington hearing to: Public Hearing Management, ERA Docket No. ERA-R-78-12, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Requests to speak for Denver hearing—Robert Drawe, 1075 South Yukon Street, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80226. Hearing locations: Washington hearing—Room 2105 2000 M Street, N.W., Washington, D.C. 20461; Denver hearing—Room 269, U.S. Post Office Building, 1323 Stout Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street, N.W., Room 2214B, Washington, D.C. 20461 (202) 254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B110, Washington, D.C. 20461 (202) 634-2170.

Douglas W. McIver (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street, N.W., Room 6128I, Washington, D.C. 20461 (202) 254-8660.

Daniel J. Thomas (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, N.W., Room 2310, Washington, D.C. 20461 (202) 254-7477.

Samuel M. Bradley (Office of General Counsel), Department of Energy, 12th & Pennsylvania Avenue, N.W., Room 5134, Washington, D.C. 20461 (202) 566-9565.

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 1978, we issued a notice of inquiry (43 FR 15158, April 11, 1978) requesting public comment on simplifying the crude oil price control program by using an entitlements-based crude oil price system, rather than the present ceiling price regulations, as the primary mechanism for regulating first sale prices of domestic crude oil. We stated that the principal objectives of such a system were to expand the role of the market system in determining specific transaction prices in sales of domestic, price-controlled crude oil and to eliminate as much of the current regulatory burden on crude oil producers, resellers and refiners as possible without affecting current benefits of price controls to consumers. We also indicated that an entitlements-based crude oil price control system could permit the elimination of ceiling prices on first sales of domestic crude oil as well as price controls on crude oil resellers. We identified and requested comment on a wide variety of issues and possible regulatory actions concerning the simplification of the existing ceiling price and entitlements programs generally and the entitlements-based price control system in particular. These included the desirability of establishing the entitlement price for a calendar quarter rather than a month; the desirability and feasibility of imposing the entitlement obligation on the first purchaser of crude oil; the legality of eliminating ceiling prices on crude oil prior to May 1979 (when authority under the EPAA is discretionary rather than mandatory); and the desirability of establishing different entitlement prices for discrete gravity ranges of crude oil.

A. Discussion of Comments

In response to our April 5 notice, we received 70 written comments. Public hearings were held in Houston, Texas on May 22, 1978, at which 5 persons testified, and in Washington, D.C. on May 24-25, at which 23 persons testified. The commenters included major, large independent, and small refiners, independent producers, crude oil resellers, trade and industry associations, a consumer group, and two federal agencies.

Although the commenters were nearly unanimous in their support of any effort to remove unnecessary regulatory controls and to restore the influence of the marketplace in domestic crude oil pricing practices, a slight majority of the commenters opposed the entitlements-based price control system. Most of the firms which opposed the proposal urged us to concentrate our efforts on a phased decontrol of domestic crude oil prices rather than a new regulatory system which would perpetuate price controls. However, of the commenters which opposed the proposal, few offered substantive support for their position other than general apprehension over the uncertainties and disruptions involved in a significant change in the status quo.

The principal arguments that were raised in opposition to the entitlements-based price control system were: 1) the system would not reduce appreciably the reporting burdens for producers, refiners or resellers, and the confusion and uncertainty which normally follows any major regulatory change would outweigh the benefits of the system; 2) since the system would continue the present crude oil pricing categories, the composite price limitation, the small refiner bias and entitlements exceptions relief for particular refiners, it would not promote market-determined pricing; 3) the fluctuations

in world and domestic crude oil prices would require repeated adjustments in the pre-determined entitlement price to compensate for previous forecast inaccuracies, creating cashflow problems for many refiners and general uncertainty in the marketplace; and 4) the likely increase in low-sulfur crude oil prices would cause producers of medium and high-sulfur crude oils to lose an equivalent amount of revenues unless there were an overall rise in the average domestic crude oil price. Many of the commenters expressed the view that it would be inappropriate to adopt the proposal at this time since the composite price requirements on first sales of domestic crude oil as well as other mandatory price controls expire on May 31, 1979, and it is unclear whether the President will use his discretionary authority to continue controls.

The overwhelming majority of the small refiners who submitted comments opposed the entitlements-based price control system. In general, they argued that, without the continuation of allocation controls on crude oil, the major integrated refiners would decline to sell their production to small and independent refiners and would outbid them for production controlled by independent producers. The result for small and independent refiners would be significantly higher crude oil costs and near total dependence on imported crude oil.

Most of the commenters who supported the concept of an entitlements-based crude oil price control system contended that its successful implementation depended upon the adoption of various complementary regulatory changes. Thus, for example, several independent and major refiners argued that without modification of the small refiner bias and elimination of entitlement purchase exemptions, some refiners would be in a position to outbid all other refiners for access to crude oil from their historical sources. Many commenters stated that the present ceiling price controls should be removed immediately upon implementation of the new system to permit the market place to determine the proper differentials among different grades and qualities of crude oils. Some commenters argued that the new system would be effective only if the entitlement value varies with crude oil gravity, while others contended that a variable entitlement price would so complicate the system as to make it unworkable. Finally, as discussed more fully below, many firms expressed the view that shifting the entitlement obligation from refiners to first purchasers would facilitate the transition to an entitlements-based crude oil price system.

Both the Department of Justice and the Bureau of Competition of the Federal Trade Commission urged us to adopt the entitlements-based price control system. They both expressed the view that it would enhance significantly competition within the petroleum industry, provided that controls on first sale prices of domestic crude oil and crude oil resellers were removed and the entitlement obligation were imposed on the first sale of domestic crude oil.

We have carefully considered the written comments received and the testimony given at the public hearings. On the basis of these comments, we have decided not to propose an entitlements-based crude oil price control system at this time. Notwithstanding that the majority of the commenters opposed the proposal, the information received in this proceeding has persuaded us that such a system would accomplish the objectives which we outlined in our April 5, 1978 Notice. However, we believe it would be desirable to implement the system in phases in order to lessen the disruptive effects and uncertainties which necessarily follow a major regulatory change. Accordingly, as the first phase in the implementation of and to facilitate the transition to an entitlements-based price system, we are proposing in this proceeding to modify the structure of the entitlements program to impose the entitlement purchase obligation on the first sale of price-controlled domestic crude oil. During the pendency of this rulemaking, we will continue to evaluate the comments submitted in response to the April 5 notice, particularly the comments addressed to the eighteen specific issues raised in the notice.

As expressed in many of the comments, a first purchaser entitlements program should significantly reduce the public and private costs associated with crude oil price controls, since such a system eliminates the need for tracking the various price tiers of domestic crude oil from the wellhead to the refiner. In addition, since all transactions after the first sale would reflect the entitlement purchase obligation, such a system should help reduce the potential evasion of price controls that now can occur downstream of the producer, since there would be less opportunity for a reseller to profit from the evasion on controls. In this regard, since any evasion scheme that occurred under this system would have to occur at the production level, it should be easier to detect such conduct than it has been under the present system where miscertifications can occur anywhere between the wellhead and the refinery gate. Finally, since the entitlement purchase obligation is imposed on the first purchaser regardless of eventual end use, the proposal would eliminate the need for special regulations to include nonrefining uses of crude oil in the entitlements program.

In deciding to propose the first sale entitlements program, we gave serious consideration to the concern reflected in some comments that the addition of aproximately 100 to 150 new participants (i.e., first purchasers other than refiners) to the entitlements program potentially could create confusion and uncertainty with respect to settlement of entitlement transactions, particularly where the accountability and financial stability of a first purchaser is questionable. However, we have concluded that, on balance, the advantages of a first purchaser entitlements program outweigh these disadvantages. In any event, as discussed below, we are requesting comments on whether we should strengthen existing provisions that are designed to ensure that all firms perform reliably in the settlement of their entitlements transactions.

B. RELATIONSHIP TO OTHER RULEMAKINGS

On November 1, 1978 (43FR 52104, November 8, 1978), we issued a notice of proposed rulemaking to expand the coverage of the entitlements program to include the nonrefining uses of price-controlled domestic crude oil. The proposal presented in this notice to shift the entitlement purchase obligation from refiners to first purchasers would automatically result in including all nonrefining uses of domestic crude oil in the entitlements program (unless a specific exception were made), since the entitlements obligation would attach at the point of first sale regardless of the ultimate use of the oil. Accordingly, the issues raised in and the comments submitted in response to the November 1 notice will be considered in the context of this rulemaking and, in the event we determine to adopt a final rule imposing the entitlement purchase obligation on first purchasers, we will terminate the nonrefining uses proceeding.

II. PROPOSED AMENDMENTS

A. GENERAL

Under the proposed "first purchaser" entitlements program, each first purchaser (regardless of whether the purchaser is a refiner, reseller or some other user of crude oil) of price-controlled domestic crude oil would be required to purchase one entitlement for each barrel of old oil and a fraction of an entitlement for each barrel of upper tier crude oil purchased in a month. However, consistent with our November 1 proposal with respect to nonrefining uses, first purchasers

would not incur an entitlement obligation with respect to old oil and upper tier oil sold to producers for purposes of crude oil production, provided that the producer certifies to the first purchaser that the crude oil will be used for production purposes. We would announce the monthly entitlement prices for old oil and upper tier crude oil in advance of each calendar quarter to permit first purchasers to establish their prices to their purchasers. Thus, resellers' invoices would reflect the appropriate entitlement obligation associated with the crude oil sold.

Refiners would be issued entitlements each month based on their crude oil runs to stills multiplied by the National Domestic Crude Oil Supply Ratio (DOSR), as is presently done. As is also the case under the present entitlements program, the sale and purchase of entitlements would take place in the second month following the month in which crude oil is run to stills. Thus, although the proposal provides for the determination of the entitlement prices on a quarterly basis, first purchasers and refiners would continue to report their first sale transactions and runs to stills, respectively, on a monthly basis.

Since under this proposal all transactions after the first sale would include the entitlement obligation (except crude oil sold for purposes of crude oil production), the provision requiring resellers of crude oil to certify the volumes and per barrel prices of lower tier, upper tier, and exempt crude oil sold in each transaction could be eliminated. For the same reason, firms (except producers) which consume price-controlled domestic crude oil for nonrefining uses will obtain such crude oil subject to the cost-equalizing effects of the entitlements program. In this regard, refiners and other firms (except producers with respect to price-controlled crude oil used for production purposes) would be deemed to have crude oil runs to stills (and thus receive entitlements) for any volume of domestic crude oil consumed for nonrefining uses.

B. PRINCIPAL DEFINITION CHANGES

Under the proposal, "first purchaser" would be defined in § 211.62 as any firm which acquires domestic crude oil in the "first sale" as that term is defined in § 212.72 of the Mandatory Petroleum Price Regulations. Since "first purchasers" rather than refiners would incur the entitlement obligations for purchases of price-controlled domestic crude oil, the term "entitlement" in § 211.62 would be redefined as the right for a particular month of a first purchaser to include one barrel of deemed old oil in its adjusted crude oil purchases in that month. Similarly, since first purchasers would not be required to certify the volumes of lower tier, upper tier and exempt crude oils sold in each transaction, and thus refiners would not report their receipts of these crude oil pricing categories, the numerator of the "National domestic crude oil supply ratio", as defined in § 211.62, would be based on the adjusted purchases of all first purchasers, rather than the "adjusted crude oil receipts" of all refiners, as is done currently.

The proposed regulations also would add a new definition of "adjusted crude oil first purchases" to provide for reporting by first purchasers of retroactive adjustments on a current basis in the same manner that refiners presently report such adjustments under the definition of "adjusted crude oil receipts." In this regard, as discussed more fully below, we are proposing to amend § 211.67(j) of the entitlements program regulations to permit first purchasers, as well as refiners, to correct clerical and other "reporting errors" by the filing of amended monthly reports.

C. EFFECT OF PROPOSAL ON FIRST PURCHASERS

The principal regulatory change to the entitlements program under this proposal is an amendment to § 211.67(b) [Required purchase of entitlements by refiners] to require each first purchaser of price-controlled domestic crude oil to purchase one entitlement for each barrel of old oil and a fraction of an entitlement for each barrel of upper tier crude oil purchased in a month. Refiners that own and consume their own crude oil production would, of course, be first purchasers as to that production, since the definition of "first sale" in § 212.72 of the price regulations provides that in the case of transfers between affiliated entities, the "first sale" will be imputed to occur as if in arms-length transactions.

As discussed above, imposing the entitlement purchase obligation on the first sale of price-controlled domestic crude oil automatically would include nonrefining uses of crude oil in the entitlements program since, in the absence of an express exemption, all transactions after the first sale would reflect the entitlement purchase obligation. However, consistent with our November 1 proposal to include nonrefining uses of price-controlled crude oil within the entitlements program, the proposed amendment to § 212.67(b) would exempt from the entitlement purchase obligation sales of lower tier and upper tier crude oil to crude oil producers for purposes of crude oil production, provided that the producer-purchaser certifies to the seller (first purchaser) that the crude oil would be used for production purposes.

On June 15, 1978 (43 FR 26540, June 20, 1978), we adopted a graduated system of reducing the entitlement obligations of (that is, increasing the number of entitlements issued to) refiners which report low-gravity California lower tier and upper tier crude oil in their adjusted crude oil receipts based on the weighted average gravity of the crude oil. Under the first purchaser system, we propose to give effect to these adjustments for California price-controlled crude oil at the first-purchaser level. Accordingly, the proposed amendment to § 211.67(b) provides a graduated system for reducing the entitlement obligations of first purchasers of California lower tier and upper tier crude oil that is similar to the system which we adopted on June 15, 1978. Since resellers play a relatively small role in the distribution of California crude oil, we believe that this approach will not frustrate our objectives underlying the June 15, 1978 amendments of better equalizing the after-entitlement costs to refiners of controlled and uncontrolled crude oil in California and providing greater incentives for refiners to purchase price-controlled California crude oil at prices that will enhance the potential for maximum domestic crude oil production. However, comments are sought on the impact, if any, of giving effect to the California entitlement adjustments at the first purchaser level on the wellhead prices of price-controlled California crude oil.

Since all transactions after the first sale, regardless of the pricing category of the crude oil involved, would be based on a price which includes the entitlement cost, the proposed regulations delete the certification requirement in § 212.131(b) applicable to resales of price-controlled domestic crude oil. The deletion of the certification requirements should substantially lessen the current regulatory burden on crude oil resellers and the potential for price violations by resellers based on miscertifications.

We would publish the entitlements notice specified in § 211.67(i) in the second month following the transaction month, as is currently done. § 211.67(i) would be amended to provide that the list would specify the number of barrels of deemed old oil purchased by each first purchaser and the number of entitlements required to be purchased by each first purchaser. With regard to first purchasers that are also refiners, the entitlements list would specify the entitlement obligations net of entitlement issuances and, if appropriate, the entitlement issuances net of entitlement obligations.

§ 211.67(i) also would be amended to provide that, in advance of each calen-

dar quarter, we would fix the price at which entitlements would be sold and purchased in each month of the quarter. The entitlement price under this proposal would be established to accomplish the objective under the present entitlements program of roughly equalizing refiners' crude oil acquisition costs.

Since the entitlement prices would be established in advance of each quarter, it will be necessary for us to project the weighted average delivered costs to refiners of imported and domestic crude oils for the quarter. In the case of *domestic* crude oils, these projections would be based on available historical data and projected first sale price increases. The projections regarding old oil and upper tier crude oil would, of course, be consistent with the schedule of monthly first sale price adjustments for the quarter.

With the elimination of the tier certification requirement, refiners would not report to us their weighted average *delivered* costs of domestic crude oils by tier. Consequently, in projecting the delivered costs of domestic crude oils, it would be necessary for us to impute the national average cost of transporting domestic crude oils from the lease to the refinery. In this regard, we are proposing to require refiners to continue reporting their receipts and delivered costs of Alaska North Slope (ANS) and Naval Petroleum Reserves (NPR) crude oils. Since ANS and NPR crude oils are not typically sold through resellers, we believe that refiners would be able to identify and report their delivered costs of such crude oils.

In light of these considerations, proposed § 211.67(i)(4) provides that the entitlement price would be calculated as the difference between the projected weighted average delivered cost per barrel to refiners of old oil and such projected weighted average delivered cost of imported crude oil, ANS crude oil, stripper well crude oil, incremental tertiary crude oil and other exempt domestic crude oils. Consistent with our recent notice of proposed rulemaking (43 FR 52186, November 8, 1978) regarding incentives to promote increased production of domestic crude oil, the above method for calculating the entitlement price would eliminate the current 21¢ penalty for refiners' receipts of imported crude oil. As we indicated in the November 8 notice, we have tentatively concluded that the 21¢ penalty may be imposing an inappropriate burden on those refiners that are dependent upon imported crude oil.

We invite comments on the appropriateness and feasibility of calculating the entitlement price in the manner described above. You are encouraged to offer alternative calculation methods. In particular, we request comments on the feasibility of establishing a single entitlement price for an entire quarter, rather than a separate entitlement price for each of the three months of the quarter, as proposed.

Finally, we are proposing to amend § 211.67(m) [Adjustments to crude oil and product costs] to permit first purchasers that are crude oil resellers to pass through the cost of entitlements to their purchasers. Proposed § 211.67(m)(2)(ii) would permit crude oil resellers to include in their monthly "costs and expenses associated with sales of crude oil," as defined in § 212.182 of the reseller price regulations contained in Subpart L of Part 212, the entitlement obligations incurred with respect to the crude oil sold in that month.

D. EFFECT OF THE PROPOSAL ON REFINERS AND NONREFINING END-USERS

Generally speaking, the shifting of the entitlement purchase obligation with respect to price-controlled domestic crude oil from refiners to first purchasers should lessen the current regulatory burden for refiners, inasmuch as refiners would not be required to keep track of and report to us the volumes and costs of lower tier, upper tier and exempt crude oil included in their crude oil receipts each month. In this regard, the current provisions designed to require refiners to account for price-controlled domestic crude oil as to which they have received the competitive benefits associated with its lower acquisition cost would be eliminated. Thus, the proposed regulations would delete the present provisions applicable to exchanges of crude oil (§ 211.67(g)) and certification by non-refiners (§ 211.67(l)). An exception is § 211.67(f), which governs transactions under the crude oil buy/sell program (§ 211.65). § 211.67(f) would be amended to provide that where a refiner-seller arranges for a refiner-buyer to acquire Price-controlled crude oil in a first sale to satisfy the refiner-seller's sales obligation under § 211.65, the refiner-seller would be deemed to be the first purchaser.

With the exception of the amendment discussed above applicable to entitlement adjustments for California price-controlled crude oil, imposing the entitlement purchase obligation on first purchasers would not involve a change in other special entitlements adjustments provisions, such as, for example, the provisions regarding the small refiner bias,[1] petroleum substitutes, and East Coast residual fuel oil.

Since refiners and other firms (except producers with respect to crude oil used for production) would acquire all price-controlled domestic crude oil, regardless of its end use, subject to the cost-equalizing effect of the entitlements program, the cost for such volumes would be approximately equivalent to the weighted average cost of uncontrolled crude oil. Proposed § 211.67(d)(9) provides that a refiner's crude oil runs to stills would (except for purposes of computing the small refiner bias) be deemed to include those volumes of domestic crude oil consumed by that refiner as other than a refinery feedstock. Proposed § 211.67(d)(10) would provide for entitlement issuances to firms other than refiners on the same basis as a refiner with respect to those volumes of domestic crude oil consumed for nonrefining uses. The effect of these provisions would be to render the after-entitlement cost for domestic crude oil consumed for nonrefining uses equivalent to the cost of crude oil used as a refinery feedstock.

E. REPORTING REQUIREMENTS FOR FIRST PURCHASERS, REFINERS, AND NONREFINING END-USERS

In order to implement the proposed first purchaser program, we are proposing to amend the refiner reporting requirements contained in § 211.66 and the reporting forms for first purchasers (FEA-P124-M-1) and refiners (ERA-49) currently used in connection with the entitlements and crude oil price control programs. Section 211.66(h) [Monthly report] presently requires refiners to report the volumes and costs by tier of all crude oils included in their crude oil receipts each month. The proposed amendment to § 211.66(h) would require refiners to report the total volumes and average costs of all domestic crude oil (excluding ANS and NPR crude oils), ANS and NPR crude oils, an imported crude oil included in their crude oil receipts in the second month prior to the month in which the report is filed. In addition, refiners would be required to report the volumes of domestic crude oil consumed for purposes other than refining (excluding lease use). Finally, refiners would be required to report their crude oil runs to stills for the reporting month, as is currently done.

We are proposing to revise the present first purchaser reporting form (FEA-P124-M-1) to require the following new information of first purchasers (including refiners that are first purchasers):

(a) The volumes (separately stated) of lower tier crude oil and upper tier crude oil (i) consumed by the first purchaser on a lease for crude oil production purposes and (ii) sold to a produc-

[1] On November 14, 1978, the ERA proposed amendments to the entitlements program to reduce the level of benefits received under the small refiner bias (43 FR 54652, Novermber 22, 1979).

er for consumption on a lease for crude oil production purposes.

(b) The volumes and weighted average gravity of California lower tier crude oil and upper tier crude oil included in the first purchases.

(c) Any permitted or requried adjustments to the volumes of lower tier, upper tier and California lower tier and upper tier crude oil included in the purchases of the first purchaser.

For firms other than refiners and producers which consume domestic crude oil for a nonrefining use, proposed § 211.66(l) would require such firms to report the volumes of domestic crude oil so consumed for purposes of receiving entitlements. Finally, the proposed amendments to § 211.66(i) would require any firm (that is, first purchaser, refiner and nonrefining user of crude oil) which is required to buy or sell entitlements to file the monthly entitlement transaction report specified in § 211.66(i). Currently, only refiners and "eligible firms" are required to file this form.

We are interested in receiving specific comments on the reporting requirements as proposed and, in particular, whether any further modifications to the reporting requirements should be made.

F. SPECIAL PROVISIONS FOR TRANSITION PERIOD

In the event we adopt a final rule imposing the entitlement purchase obligation on first purchasers, it will be necessary to ensure that all price-controlled domestic crude oil is properly accounted for during the transition period between the present entitlements program and the first purchaser entitlements program. Thus, under proposed § 211.67(n), the provisions of §§ 211.62, 211.66, and 211.67, as they existed prior to the effective date of the final rule, would govern entitlement issuances and purchase requirements after the effective date with respect to receipts and runs to stills of price-controlled domestic crude oil prior to the effective date of the proposed rule. To illustrate, if the proposal were adopted effective April 1, 1979, in April and May refiners would be required to file with the ERA the monthly report specified in § 211.66 with respect to their crude oil receipts and runs to stills in February and March, respectively, pursuant to the regulations in effect prior to April 1, 1979. Similarly, ERA would issue in April and May the entitlement notice for February and March, respectively, and refiners would be required to consummate their entitlement purchase and sale transactions for February and March by the end of April and May, respectively, pursuant to the regulations in effect prior to April 1, 1979.

Proposed § 211.67(n) also provides that any price-controlled domestic crude oil purchased (including crude oil in transit or in inventory) prior to the effective date of this proposed rule and sold after such effective date would be deemed, in this one instance only, to be a first purchase of price-controlled domestic crude oil in the month following the effective date of the proposed rule. In addition, any volume of crude oil received by any firm *after* the effective date of the proposed rule pursuant to an exchange subject to present § 211.67(g) in which price-controlled domestic crude oil was given up *prior* to the effective date of the rule would be deemed to be a first purchase of price-controlled domestic crude oil at the time it is received. In the event this proposal is adopted, we will take appropriate measures to ensure that no price-controlled domestic crude oil is unaccounted for during the transition between the present program and the first purchaser program.

The following two examples will illustrate the operation of proposed § 211.67(n). For the purposes of these examples, assume that the entitlement obligation is imposed on first purchases effective April 1, 1979. In the first example, a firm purchases lower tier crude oil in March 1979 and sells that crude oil in April. Under proposed § 211.67(n), the firm which sold the crude oil after April 1 (irrespective of whether it is a first purchaser of the crude oil) would be considered a first purchaser of the crude oil and would be required to include the crude oil in its adjusted crude oil purchases for April (which would be reported in June). Thus, the firm would be required to satisfy the entitlement purchase requirement associated with the crude oil.

For the purposes of the second example, assume that Refiner a acquires lower tier crude oil in March and enters into an exchange agreement with Refiner B whereby Refiner A will deliver the lower tier crude oil to Refiner B on March 30 in exchange for crude oil to be delivered April 15.[2] Under proposed § 211.67(n), Refiner A would be required to treat the crude oil received April 15 as a first purchase of *lower tier* crude and therefore satisfy the entitlement obligation associated with the lower tier crude oil.

III. REQUEST FOR ADDITIONAL COMMENTS

Comments are requested on all aspects of the proposed first sale entitlements program described in this notice. You are encouraged to provide your own analysis of any regulatory problems which could develop if the proposal is adopted and to recommend alternatives to the regulatory provisions set forth in this notice. In addition to the specific comments requested in other sections of this notice, we invite comments on the issues discussed below:

1. Shifting the entitlement purchase obligation from refiners to first purchasers may pose a cash flow problem (that is, a requirement for increased working capital) in the second month following the adoption of the first purchaser system for certain refiners that acquire price-controlled crude oil from first purchasers/resellers. The following example illustrates this potential cash flow problem.

For the purposes of the example, assume that the entitlement purchase obligation is imposed on first purchasers effective April 1, 1979 and that a refiner purchases and receives delivery of deemed old oil from a reseller in April. In May, when the reseller's invoice normally is payable, the refiner would be required to pay to the reseller a price for the oil that will reflect the entitlement obligation the reseller has paid on the deemed old oil. The total will be approximately equal to the market price for uncontrolled oil.

Under the current entitlements program, the refiner would not have been required to buy entitlements until the *second* month (*i.e.*, June) after the receipt of the deemed old oil. As is done currently, under the proposal the refiner would not receive entitlement issuances for its April runs to stills until June. Thus, in May the refiner would be required to make a cash outlay for crude oil at market prices irrespective of whether it would have been a purchaser or seller of entitlements under the present program.

This cash flow problem does not apply to refiners which purchase crude oil directly from the producer (or from their own production division) as opposed to through a reseller. As first purchasers, such refiners would not be required to buy entitlements for April crude oil receipts until June, when they receive entitlement issuances for their April runs to stills.

We have not been able to determine whether and to what extent refiners will experience a cash flow problem of the type described above. However, it appears that the impact, if any, of the cash flow problem would be greatest upon small refiners (those having refining capacity less that 175,000 barrels per day), since many of them purchase a significant portion of their crude oil supply through resellers and they may not have, or be unable to

[2] Under present § 211.67(g), Refiner A is deemed to retain the lower tier crude oil exchanged away and is required to include the lower tier crude oil in its crude oil receipts at the time the imported crude oil constitutes a crude oil receipt, that is, after April 15.

borrow, sufficient working capital to finance the entitlement obligations in the second month of the first purchaser system.

We invite comments on all aspects of the cash flow problem. In particular, comments are requested on whether you believe that refiners would be able to recover any increased working capital costs in the marketplace. If not, is it desirable and necessary to adopt a regulatory provision designed to alleviate the cash flow problem? What type of provision would be appropriate? Should all small refiners that acquire price-controlled domestic crude oil from resellers be eligible for such relief, or would it be appropriate to limit the relief to only the smallest small refiners (for example, those with capacity under 50,000 barrels per day), or only to small refiners with a demonstrated hardship? Should refiners other than small refiners be elgible for such relief? Commenter who believe they would experience a cash flow problem of the type described above are requested to submit detailed financial data which would show the nature and magnitude of the problem.

2. Some crude oil resellers also may experience a cash flow change as a result of imposing the entitlement obligation on first purchasers. Thus, for example, where there are two or more resellers in the distribution chain between the producer and the ultimate refiner purchaser, the reseller purchasing deemed old oil from a first purchaser would be required to pay the first purchaser a price for the oil that reflects the first purchaser's entitlement obligation. The second reseller may experience a cash flow change if it is required to make full payment to the first purchaser before it sells the crude oil to a refiner. Although we anticipate that resellers would adjust their business arrangements to avoid problems from such changes in cash flow, we invite comments on the necessity of a regulatory provision that deals with this potential problem.

3. A number of refiners have expressed concern to us that under the present entitlements program refiners that are dependent upon imported crude oil and thus are required to sell entitlements are penalized by the time lag between the time such crude oil is booked into inventory and receipt of entitlements revenues. For example, a refiner that processes imported crude oil currently carries $1.42 (the value of the runs credit in September) per barrel of inventory cost on behalf of the refiner that processes lower tier crude oil for about 75 days. Assuming a marginal cost of money of 10% per annum, this cost to the imported crude oil refiner is approximately 3¢ per barrel in carrying charges. On the other hand, the refiner processing lower tier crude oil enjoys a benefit of approximately 14¢ per barrel, inasmuch as it has the use of the net entitlement obligation (approximately $6.71 for September 1978) for this 75-day period.

Under a first purchaser entitlements program, refiners that acquire price-controlled domestic crude oil from resellers may incur a similar penalty since they would be required to pay the resellers the entitlement obligations associated with crude oil receipts in a particular month approximately five weeks before they receive entitlement issuances for their runs to stills in that month. The resellers, of course, would enjoy the benefit of the use of the entitlement monies for this five-week period.

We are interested in receiving comments on all aspects of this issue and, in particular, the desirability and feasibility of a regulatory solution, such as, for example, establishing a separate entitlement price that would reflect the time value of the entitlement price for firms that may be penalized in the manner described above.

4. As indicated above, a number of the comments submitted in response to our April 5 notice on Simplification of Crude Oil Price Controls expressed concern that some first purchasers may not perform reliably in the entitlements market. Specifically, some refiners expressed the belief that certain resellers which enter the market only occasionally as first purchasers may be difficult to identify or may attempt to avoid their entitlement purchase obligations. We invite comments on whether we should adopt regulatory measures to deal with this problem and, if so, what type of measures would be the most effective and the least burdensome. For example, would it be desirable and feasible to require first purchasers to deposit their entitlement monies with a central or regional escrow agent, who would then purchase entitlements from refiners? Should all first purchasers be subject to such a requirement? If not, what criteria should we use to determine which resellers would be subject to the requirement?

In addition to or in lieu of the escrow agent mechanism, should we adopt a provision that would permit us to impose sanctions against any firm which fails to purchase or sell entitlements and, if so, what type of sanctions? We are particularly interested in receiving specific and detailed comments on this issue and, if warranted, we may adopt one or more measures designed to ensure that all firms perform reliably in purchasing and selling entitlements.

5. Under our November 1, 1978 nonrefining uses proposal, refiners and non-refiners (except producers with respect to crude oil used for crude oil production) would receive entitlements only for lower tier and upper tier crude oil consumed for nonrefining uses. However, under this proposal such firms would receive entitlements for nonrefining uses of *all* domestic crude oil, since the elimination of the § 212.131(b) certification requirement would make it impossible for them to distinguish between price-controlled and uncontrolled domestic crude oil. We invite comments on whether such firms should also receive entitlements for imported crude oil consumed for nonrefining uses. In addition, comments are sought on whether any nonrefining uses (for example, crude oil used for bunker fuel) should be ineligible for entitlement issuances.

6. Under present § 211.67(j), in adjusting entitlement issuances or purchase requirements to reflect refiners' reporting errors, we are required to give effect to any differential between the entitlement price for the month in which the correction is reflected as compared with the entitlement price for the month as to which the reporting error is made. We invite comments on whether § 211.67(j) should be amended to provide that such adjustments also would give effect to any change in the domestic crude oil supply ratio.

IV. Written Comment and Public Hearing Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the proposals set forth in this notice of proposed rulemaking. Comments should be submitted by 4:30 p.m., e.s.t., March 23, 1979 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "First Purchaser Entitlements Program." Fifteen copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. Public Hearings

1. *Procedure for Request to Make Oral Presentation.* The times and places for the hearings are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present all testimony, a hearing will be continued to 9:30 a.m. of the next

business day following the first day of the hearing.

If you have any interest in the proposals in this notice, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., e.s.t., March 2, 1979. You should be prepared to give a concise summary of the proposed oral presentation. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., March 6, 1979, and will be required to submit one hundred copies of your statement to the appropriate address indicated in the "Addresses" section of this preamble before 4:30 p.m., e.s.t. on March 12, 1979 for the Washington, D.C. hearing and, for the Denver hearing, to the hearing room by 9:30 a.m. of the date of the hearing.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at each of the hearings. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at either of the hearings to the addresses indicated above for requests to speak before 4:30 p.m., of the day before the hearing. If you wish to have a question asked at a hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of a hearing will be announced by the presiding officer.

Transcripts of the hearings will be made and the entire record of each of the hearings, including the transcripts, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of a hearing from the reporter.

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

Executive Order 12044 (43 FR 12661, March 24, 1978) requires that a regulatory analysis be prepared for all regulations which will result in "an annual effect on the economy of $100 million or more" or will result in "a major increase in costs or prices for individual industries, levels of government or geographic regions." We have determined that neither of these threshold criteria for the preparation of a regulatory analysis is met by the proposed rule. However, since the proposal involves significant regulatory changes, we have prepared a preliminary regulatory analysis which examines the various potential impacts of the proposal. Copies of the preliminary regulatory analysis may be obtained from ERA's Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. You are invited to provide comments on the preliminary regulatory analysis at the time you submit comments on the proposed rule. Such comments will be taken into account before the preparation of a final regulatory analysis on any final rule that may be adopted.

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (Pub. L. 95-91), this proposed rule is being referred, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination whether the proposed rule may significantly affect any function within the Commission's jurisdiction pursuant to section 402 (a)(1), (b), and (c)(1) of the Act.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Parts 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, are proposed to be amended as set forth below.

Issued in Washington, D.C., January 19, 1979.

DAVID J. BARDIN,
Administrator,
Economic Regulatory Administration.

1. Section 211.62 is amended by adding the definitions of "Adjusted crude oil purchases" and "First purchaser" in proper alphabetical order, and by revising the definitions of "Entitlement," "National domestic crude oil supply ratio," "Old oil," and "Upper tier crude oil" to read as follows:

§ 211.62 Definitions.

* * * * *

"Adjusted crude oil purchases" means the crude oil purchases of a first purchaser in a particular month the composition of which has been adjusted to reflect any invoice which is received in that month for domestic crude oil purchased by that first purchaser in any previous month, and which has the effect of increasing or decreasing the volume of old or upper tier crude oil reported by that first purchaser for such previous month, in cases where such previously reported volume was based on either a prior invoice or a good faith estimate (based on that first purchaser's past experience as to the old and upper tier crude oil content of domestic crude oil of the same origin) as to the old and upper tier crude oil content of that crude oil delivery.

* * * * *

"Entitlement" means, for a particular month the right of the first purchaser owning the entitlement to include one barrel of deemed old oil (as provided in § 211.67(b)), in its adjusted crude oil purchases in that month. The issuance and transfer of entitlements shall be evidenced on records maintained by the ERA.

* * * * *

"First purchaser" means any firm which acquires domestic crude oil in the first sale as defined in § 212.72 of this chapter.

* * * * *

"National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)(2)) included in the aggregate adjusted crude oil purchases of all first purchasers, decreased by a number of barrels of old oil equal to the number of entitlements issuable to small refiners under § 211.67(e) and the number of entitlements deducted from the entitlement purchase requirements of all first purchasers

under § 211.67(b)(3) and the number of entitlements issuable under § 211.67(a)(5), divided by the sum of the total volume of the crude oil runs to stills for all refiners for that month and thirty percent (30%) of the total volume of imports of eligible products by eligible firms for that month, *provided* that, for the period July 1, 1978 through June 30, 1979, the reference herein to thirty percent (30%) shall read fifty percent (50%). The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

* * * * *

"Old oil" means old crude oil as defined in §§ 212.72 and 212.75 of this chapter, except that old oil included in a first purchaser's adjusted crude oil purchases or a refiner's adjusted crude oil receipts shall not include condensate recovered at the inlet side of a gas processing plant.

* * * * *

"Upper tier crude oil" means, (i) for the period February 1, through August 31, 1976, new crude oil as defined in §§ 212.72 and 212.75 of this chapter and crude oil produced and sold from a stripper well lease as defined in § 212.74 of this chapter, and (ii) effective September 1, 1976, new crude oil as defined in §§ 212.72 and 212.75 of this chapter, except that upper tier crude oil included in a first purchaser's adjusted crude oil purchases or a refiner's adjusted crude oil receipts shall not include condensate recovered at the inlet side of a gas processing plant.

* * * * *

2. Section 211.66 is amended by revising paragraphs (h) and (i) and by adding a new paragraph (l) to read as follows:

§ 211.66 Reporting requirements.

* * * * *

(h) *Monthly report.* On or prior to the fifth day of each month, commencing with the month of ———, 1979, each refiner shall file with the ERA a report certifying the following information as to the second month prior to the month in which the report is filed:

(1) The estimated volume (to the best of the knowledge of the certifying officer) of domestic crude oil (excluding Alaska North Slope and Naval Petroleum Reserve crude oils) included in the crude oil receipts of that refiner.

(2) The estimated volumes (to the best of the knowledge of the certifying officer), stated separately, of Alaska North Slope and Naval Petroleum Reserve crude oils included in the crude oil receipts of that refiner.

(3) The volume of crude oil runs to stills of that refiner, taking into account, and specifying the amount of, the adjustments provided for in § 211.67(d).

(4) The volume of domestic crude oil consumed by that refiner for purposes other than refining.

(5) The weighted average costs (including transportation costs to the refinery) for that refiner for (i) domestic crude oils (excluding Alaska North Slope and Naval Petroleum Reserve crude oils), (ii) Alaska North Slope and Naval Petroleum Reserve crude oils, and (iii) imported crude oil included in that refiner's crude oil receipts. For refiners required to file transfer pricing report forms under § 212.84 of this chapter, the weighted average cost of imported crude oil reported under this subparagraph should be derived from the landed costs set forth in such reports.

(6) Such other information as the ERA may request.

(i) *Monthly transaction report.* On or prior to the tenth day of each month, commencing with the month of ———, 1979, each refiner, eligible firm, first purchaser or other firm that was required to purchase or sell entitlements for the third month prior to the month in which the report is filed shall file with the ERA a report certifying its purchases or sales of entitlements for that prior month.

* * * * *

(l) *Special report for crude oil consumed for non-refining uses.* On or prior to the fifth day of each month, commencing with the month of ———, 1979, each firm other than a refiner or producer (with respect to crude oil consumed on the lease for crude oil production purposes) that purchases domestic crude oil for consumption by that firm for purposes other than refining shall file with the ERA a report certifying the volumes of domestic crude oil so consumed.

3. Section 211.67 is amended by deleting the last sentence of subparagraph (2) of paragraph (a), by deleting subparagraph (4) of paragraph (a), by renumbering subparagraph (5) of paragraph (a) as subparagraph (4), by revising paragraphs (b) and (c), by adding new subparagraphs (9) and (10) to paragraph (d), by revising paragraph (f), by deleting paragraphs (g) and (h) and reserving them for future use, by revising subparagraphs (1), (2) and (4) of paragraph (i), by revising subparagraphs (1) and (3) of paragraph (j), by revising paragraph (k), by deleting paragraph (l) and reserving it for future use, by revising subparagraph (2) of paragraph (m), and by adding a new paragraph (n) to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by first purchasers.*

(1) For each month, commencing with the month of ———, 1979, each first purchaser of domestic crude oils the first sale of which is subject to the provisions of Part 212 of this chapter shall purchase a number of entitlements effective for that month equal to the number of barrels of deemed old oil purchased by that first purchaser in that month; *provided that* this subparagraph (1) of paragraph (b) shall not apply to purchases of lower tier or upper tier crude oil sold to crude oil producers for purposes of crude oil production, provided that the producer certifies to the seller that the crude oil will be used for production purposes. Entitlement purchases required under this paragraph (b) with respect to a particular month shall be effected by the close of the second month following that month.

(2) To calculate the number of barrels of deemed old oil included in a first purchaser's adjusted crude oil purchases for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall constitute a fraction of a barrel of deemed old oil, such fraction to be fixed by the ERA by the ——— day of the month preceding the calendar quarter for which such fraction shall be effective.

(3) For each month, commencing with the month of ——— 1979, the number of entitlements required to be purchased under paragraph (b)(1) of this section by each first purchaser shall be decreased by: (i) the number of barrels of California lower tier crude oil purchased by that first purchaser in that month multiplied by a fraction, the numerator of which is $2.38 plus or minus $.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California lower tier crude oil purchased in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that quarter; and (ii) the number of barrels of California upper tier crude oil purchased in that month multiplied by a fraction, the numerator of which is $1.45 plus or minus $.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California upper

tier crude oil purchased in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that quarter; *provided that* the dollar value by which the entitlement obligation is reduced for a barrel of such California crude oil shall not exceed the dollar value of the entitlement obligation associated with such crude oil. Each first purchaser shall calculate and report the weighted average gravity of California lower tier crude oil and California upper tier crude oil separately, and in calculating such weighted average gravities shall (A) determine the gravity of such crude oil for each purchase of such crude oil in that month on the basis of the gravity of such crude oil at the time it is purchased and (B) determine a single monthly weighted average gravity for such crude oil by weight averaging (on a volumetric basis) all of such crude oil purchased in that month.

* * * * *

(c) *Refiners and other firms issued entitlements.* For each month, commencing with the month of ———, 1979, each refiner that has been issued entitlements for that month shall sell such entitlements and any firm other than a refiner, including any eligible firm as defined in § 211.62, that has been issued entitlements shall sell such entitlements.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.*

* * * * *

(9) Commencing with the month of ———, 197——, the volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio (without giving effect to the provisions of paragraph (e) of § 211.67) shall include the number of barrels of crude oil consumed (other than as a refinery feedstock) by that refiner or blended into a refined petroleum product or residual fuel oil by that refiner and sold to any firm other than a refiner for consumption by that firm for purposes other than refining.

(10) Notwithstanding any other provisions of this section, any firm other than a refiner shall be eligible for entitlement issuances on the same basis as a refiner under paragraph (d)(9) of this section with respect to those volumes of crude oil consumed by that firm for purposes other than refining; *provided* that, this subparagraph (10) shall not apply to those volumes of crude oil consumed by a producer for purposes of crude oil production.

* * * * *

(f) *Transactions under § 211.65.* Effective for sales for the allocation period commencing ———, 1979 under § 211.65 of this subpart, and notwithstanding the provisions of subparagraph (1) of paragraph (b) of this section, a refiner-seller shall be deemed to be a first purchaser as to any volume of domestic crude oil acquired by a refiner-buyer in a first sale as defined in § 212.72 of this chapter, where such first sale is made to satisfy such refiner-seller's sales obligations under § 211.65 of this subpart.

(g) *Reserved.*

(h) *Reserved.*

(i) *Issuance and transfer of entitlements.* (1) The ERA shall issue entitlements for each month (effective for the month of ——— 1979 and subsequent months) pursuant to a notice issued on the fifteenth day of the second month following that month.

(2) Each notice published by the ERA evidencing the issuance of entitlements under this section shall specify as to a particular month the national domestic crude oil supply ratio, the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil purchased by each first purchaser, the number of entitlements issued to each such refiner or other firm, the number of entitlements required to be purchased or sold by each such refiner, first purchaser or other firm, and the price at which entitlements shall be purchased and sold.

* * * * *

(4) On or about the tenth day preceding each calendar quarter, the ERA shall fix and publish the prices at which entitlements shall be sold and purchased for each month during the calendar quarter. The entitlement price shall be equal to the differential between the projected weighted average cost per barrel to refiners of old oil, and such projected weighted average costs of imported crude oil, ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter, such costs to be equivalent to the projected delivered costs to the refinery.

* * * * *

(j) *Reporting errors.* (1) Refiners, first purchasers and other firms, including eligible firms, shall correct any errors contained in reports filed pursuant to § 211.66, or reports filed pursuant to statutory authority, by filing an amended report for the particular month. Based on any reporting errors so corrected, the ERA in its discretion may adjust entitlement issuances to the refiner or other firm or adjust the entitlements purchase obligations of the first purchaser, refiner or other firm in one or more months subsequent to the month in which the amended report is filed with the ERA, by issuing fewer entitlements than the number otherwise issuable, by requiring the refiner or eligible firm to purchase entitlements in order to correct for excess entitlements issued in a prior month or by issuing entitlements over and above the number otherwise issuable to compensate for too few entitlements having been issued in such prior month or by requiring a first purchaser to purchase entitlements to compensate for insufficient entitlement purchase obligations for a prior month. All entitlement issuances or purchase requirements under this subparagraph shall give effect to any differential between the entitlement price for the month in which any correction is reflected as compared with the entitlement price for the month as to which the reporting error was made (except with respect to corrections to volumes of crude oil runs to stills where a corresponding adjustment to crude oil receipts was made as contemplated by the term "adjusted crude oil receipts" in § 211.62) and such other factors as the ERA deems appropriate.

* * * * *

(3) For purposes of this paragraph, errors required to be corrected by the filing of amended reports include (i) clerical errors, and (ii) inaccurate estimates as to the domestic crude oil pricing composition of a particular volume of crude oil where the refiner or first purchaser had no basis, in prior experience or otherwise, on which to make that estimate.

* * * * *

(k) *Failure to consummate transactions.* The ERA may direct first purchasers, refiners or other firms, including eligible firms, that have not purchased the required number of entitlements under this section for a particular month to purchase such required number of entitlements at a price specified by the ERA from any first purchaser, refiner or other firm, including an eligible firm, that has entitlements for such month available for sale. The ERA may direct first purchasers, refiners, or other firms, including eligible firms, that have entitlements available for sale to sell such entitlements at a price specified by the ERA to first purchasers, refiners, or other firms, including eligible firms,

that have not purchased their required number of entitlements under this section.

(l) *Reserved.*

(m) *Adjustments to crude oil and product costs.*

* * * * *

(2) *Resellers and retailers.* (i) The sales revenues from entitlements sold pursuant to this section by resellers or retailers of refined petroleum products and residual fuel oil shall be subtracted from the cost of the product in inventory for which the entitlements were issued, so as to reduce the weighted average unit cost of that product in inventory computed pursuant to § 212.92 of this chapter.

(ii) The reseller's costs and expenses associated with sales of crude oil as defined in § 212.182 of this chapter in a month may include the cost of entitlements associated with the crude oil sold in the month.

* * * * *

(n) *Savings provision; deemed old oil purchased prior to ———, 1979 and sold after ———, 1979.* (1) The provisions of this section and §§ 211.62 and 211.66 as in effect on ———, 1979 shall govern entitlement purchase and sale requirements which arise after ———, 1979 with respect to refiners' crude oil runs to stills and adjusted crude oil receipts for any month prior to ———, 1979.

(2) Any firm that purchased old oil or upper tier crude oil prior to ———, 1979 and sells such crude oil after ———, 1979, shall be deemed a first purchaser as to such crude oil, irrespective whether the firm acquired the crude oil in a first sale as defined in § 212.72 of this chapter, and shall include the volumes of such crude oil in its adjusted crude oil purchases for the month of ———. In addition, any firm which receives crude oil after ———, 1979, pursuant to an exchange or matching purchase and sale transaction of the type described in paragraph (g)(1) of this section as in effect prior to ———, 1979, in which old oil or upper tier crude oil is exchanged away prior to ———, 1979, shall be deemed a first purchaser as to such crude oil received after ———, 1979 and shall include in its adjusted crude oil purchases for the month in which such crude oil is received the volumes of old oil or upper tier crude oil exchanged away prior to ——, 1979.

§ 212.131 [Amended]

4. Section 212.131 is amended by deleting paragraph (b) and by redesignating paragraph (c) as paragraph (b).

§ 212.185 [Amended]

5. Section 212.185 is amended by deleting paragraph (c).

[FR Doc. 79-2589 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART VI

DEPARTMENT OF TRANSPORTATION

Coast Guard

■

VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING; STATE NUMBERING AND CASUALTY REPORTING SYSTEM

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER S—BOATING SAFETY

[CGD 76-155]

PART 173—VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEM

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: A change is being made to the accident reporting regulations which would reduce the number of recreational boating accidents which must be reported to the Coast Guard. Present reporting requirements result in accidents being reported in which the Coast Guard has minimal interest. One other change will require States to list the cause of accidents on the accident report forwarded to the Coast Guard. These changes will reduce the reporting burden and increase the usefulness of the report. Similarly, the time period allowed for reporting certain accidents will be extended. A proposed change to the vessel numbering requirements is being withdrawn. Also being withdrawn is a proposal to change the Application for a Certificate of Number which will be included in a more comprehensive change to the Application.

EFFECTIVE DATE: February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. David R. Gauthier, Office of Boating Safety (G-BLC-3/TP42), Room 4308, Department of Transportation, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590, 202-426-4176.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking concerning this amendment was published in the FEDERAL REGISTER issue of November 10, 1977 (42 FR 58722). Interested persons were invited to submit written comments to the Coast Guard before December 27, 1977.

DRAFTING INFORMATION

The principal persons involved in the drafting of this rule are: Mr. D.R. Gauthier, Project Manager, Office of Boating Safety and Ms. Mary Ann McCabe, Project Attorney, Office of Chief Counsel.

DISCUSSION OF COMMENTS

Eleven comments, including nine from state boating law administrators, one from the National Transportation Safety Board (NTSB), and one from the public, were received.

Numbering: Exemption of Tenders of Documented Yachts. Of the nine State boating law administrators who responded, eight expressed opposition to the proposal to exempt tenders of documented yachts from the vessel numbering requirements of 33 CFR 173.13 and 173.27. Reasons expressed were law enforcement problems connected with the multiple uses of small boats used as tenders and a reluctance to extend a financial benefit to a class of boaters seen by some States as already circumventing the State registration laws by documenting their boats with the Coast Guard. Adoption of this exemption by the States would not be required and, in light of the apparent widespread opposition to the rule, it can be expected that the exemption would be effective in few States other than those for which the Coast Guard is the numbering authority. For that reason, and because of the potential confusion which would result, the Coast Guard has decided to withdraw that proposal.

CASUALTY AND ACCIDENT REPORTING

Four persons commented on the proposed changes to the accident reporting requirements of 33 CFR 173.55. Two of the commenters supported all of the proposed changes. The other two commenters found that the new criterion for a reportable injury, "unable to perform normal functions or usual activities for more than 24 hours", is as ambiguous as the phrase to be replaced. One commenter suggested, as an alternate criterion, "receives medical treatment," defined as "aid or attention by a physician or other person trained to practice medicine or administer treatment." In the Notice of Proposed Rulemaking, the Coast Guard proposed deleting the phrase "receives medical treatment" from the existing regulations because it was considered ambiguous and resulted in a lack of uniformity in reporting. However, since the commenters seemed to have as much difficulty with the proposed criterion, the Coast Guard has decided to adopt the commenter's suggestion to keep the phrase "receives medical treatment," but to modify the commenter's suggested definition to create a clearer criterion that will result in greater uniformity of reporting.

One commenter was concerned that under the proposed $200 criterion for property damage, accidents involving inexpensive boats would not be reported even if the boat was a total loss. The commenter suggested, therefore, that a criterion for accidents involving complete loss of the vessel be added. The Coast Guard has adopted that suggestion.

One commenter objected that the latitude left to the States by 33 CFR 174.101, in that a State may require accident reports resulting in property damage less that $200, demolishes the objective of uniformity. The Coast Guard does not concur and the comment was not adopted. States have had, since 1972, the latitude to require accident reports for accidents other than those the Coast Guard would require and there has been no serious public objections.

REVIEW OF REPORTS

Three commenters objected that the changes to 33 CFR 174.103 would require onsite investigations of all accidents. They argue that it would be difficult, if not impossible, to guarantee accuracy or completeness. It is not the intent of this section to require onsite investigations, although the Coast Guard encourages the States to do so. The change does not add a new requirement to determine cause. It merely clarifies how and where the determination should be furnished to the Coast Guard. As noted in the proposal, 70% of the states follow this procedure now. If during a review of a report the reviewing agency finds that the report does not state the cause of the accident or that the cause stated is inconsistent with information which the reviewing agency possesses, the reviewing agency is required to enter its opinion as to the cause. To clarify that there is no intent to require an investigation of the accident, the phrase "based on information available" is added and the term "apparent cause" is used.

One commenter suggested that State agencies should determine the cause of the fatality, if appropriate. This comment was not adopted because it may be interpreted as placing unintended burdens (requiring autopsies) upon the States.

This amendment has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis and Review of Regulations (43 FR 9582, March 8, 1978). A final evaluation has been prepared and is included in the public docket.

In consideration of the foregoing Title 33 of the Code of Federal Regulations is amended as set forth below:

1. By revising § 173.55(a) (2) and (3) and (b) (2) and (3) to read as follows:

§ 173.55 Report of casualty or accident.

(a) * * *

(2) A person is injured and requires medical treatment beyond first aid;

(3) Damage to the vessel and other property totals more than $200 or there is a complete loss of a vessel; or

* * * * *

(b) * * *

(2) Within 48 hours of the occurrence if a person is injured and requires medical treatment beyond first aid, or disappears from a vessel; and

(3) Within 10 days of the occurrence or death if an earlier report is not required by this paragraph.

* * * * *

2. By revising § 174.101(b) to read as follows:

§ 174.101 Applicability of state casualty reporting system.

* * * * *

(b) The State casualty reporting system may require vessel casualty or accident reports resulting in property damage of $200 or less.

3. By revising § 174.103 (c) and (d) to read as follows:

§ 174.103 Administration.

* * * * *

(c) Reviews each accident and casualty report to assure the accuracy and completeness of each report;

(d) Determines the cause of casualties and accidents reported based on information available and indicates the apparent cause on the casualty report or on an attached page;

* * * * *

(46 U.S.C. 1486; 49 CFR 1.46(n)(1).)

Dated: January 20, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 79-2673 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART VII

DEPARTMENT OF TRANSPORTATION

Coast Guard

■

VESSELS OF 1,600 GROSS TONS OR MORE

Proposed Electronic Navigation Equipment

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 164]

[CGD 77-168]

VESSELS OF 1600 GROSS TONS OR MORE

Proposed Electronic Navigation Equipment

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice proposeds a more detailed standard for marine LORAN-C receivers, provides for a "phase in" period, and modifies the proposed warranty requirement. The more detailed standard was not available at the time of publication of the notice, November 14, 1977 (42 FR 59012). Although objectively similar, it is so clearly superior to the previously proposed standard that the Coast Guard considers its incorporation worthy of consideration.

DATE: Comments must be received by March 12, 1979.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/81) (CGD 77-168), U.S. Coast Guard, Washington, DC 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Fred A. Schwer, Project Manager, Office of Marine Environment and Systems (G-WLE-4/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590, (202) 426-4958.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should indicate their name and address, identify this notice (CGD 77-168) and the specific section of the proposal to which each comment applies, and give reasons for each comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No additional public hearing is planned but one may be held at a time and place to be set in a later notice in the FEDERAL REGISTER if such a meeting is requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

DRAFTING INFORMATION

The principal persons involved in drafting this document are: Mr. Fred Schwer, Office of Marine Environment and Systems, Project Manager, and Mr. Stanley Colby, Office of Chief Counsel, Project Attorney.

DISCUSSION OF COMMENTS

The Coast Guard published a notice of proposed rulemaking on this subject on November 14, 1977 (42 FR 59012). Thirty two letters of comment were received. Six commenters endorsed the proposal as written and two additionally advocated haste in its implementation. The Coast Guard agrees with the need for deliberate haste and is proceeding with the rulemaking as quickly as necessary information becomes available and the Administrative Procedure Act allows.

Nine commenters urged that the Coast Guard incorporate the "Minimum Performance Standards (MPS) [for] Marine LORAN-C Receiving Equipment", developed by the Radio Technical Commission for Marine Services (RTCM), an advisory group to the Federal Communications Commission, as the required standard for LORAN-C receivers. That document became available in January 1978. In reviewing the MPS, it was evident that the standard is a more detailed version of that which the Coast Guard proposed in the notice of proposed rulemaking. In response to the commenters and in recognition of the fact that use of the MPS will achieve the same objectives and that it is a technically superior document, the Coast Guard proposes to incorporate it as the LORAN-C standard. The purpose of this supplementary notice is publication of the more detailed standard.

This notice proposes one departure from the RTCM MPS. The existence of an interfacing capability, described in section 1.4(f) of the MPS under advisory information, would be made mandatory. Loran Position Transmitting equipment will be proposed as a requirement for Trans Alaskan Pipeline System tankers in the Prince William Sound VTS area by 1980. A similar requirement is contemplated for the Puget Sound, Houston, New Orleans and New York VTS Areas. Moreover, a general requirement for continuous position reporting by vessels calling at U.S. ports is being discussed as a means of tracking vessels in the U.S. Coastal Confluence Zone. In view of the probable need for the interfacing capability within the next few years, it is proposed that the requirement be imposed now. In that way, receivers would not require retrofit or suffer premature obsolescence.

Nine commenters suggested that the Coast Guard "grandfather" good existing units, even if they are not "to spec". This was considered, but the definition of "good" units is an elusive one. That approach would require the Coast Guard to undertake an evaluation of each existing receiver. This would be time consuming and expensive and neither personnel nor financial resources are available for such a program. Instead, the Coast Guard is proposing a "phase in" period, from June 1, 1979 to June 1, 1981, during which any Type I or II (fully- or semi-automatic acquisition) receiver will be acceptable. At the end of that period, only LORAN-C sets complying with the RTCM standard would be acceptable.

The Coast Guard proposes to stagger the effective dates for various vessels. Section 5 of the Port and Tanker Safety Act of 1978 (Pub. L. 95-474) requires tank vessels of 10,000 gross tons or more that carry oil or any hazardous material in bulk as cargo or in residue to be equipped with an electronic position fixing device by June 1, 1979. Therefore, those vessels would have to be equipped with a Type I or II LORAN-C or a specified alternative by that date. All other tank vessels of 1600 gross tons or more would have to have them by June 1, 1980, and all other vessels of 1600 gross tons or more by June 1, 1981.

Nine commenters asserted that the warranty requirement, as written, subjected manufacturers to an unacceptable degree of product liability. This was not the intent of the proposal. The Coast Guard, as explained above, is not able to undertake a type approval program for electronic navigation equipment at this time. Therefore, because it is necessary for vessels to be equipped with adequate devices and because purchasers and vessel inspection personnel must have a way to recognize complying units, the proposed warranty requirement is retained.

It is recognized that manufacturers may have no control over equipment installation and proper use, nor was that broad a warranty intended. Therefore, it is proposed that the warranty be limited to the set being in compliance as designed and manufactured or as subsequently modified by the manufacturer. Moreover, it is recognized that an individual warranty program may prove cumbersome, particularly for sets already installed or in distribution. Therefore, this supplementary notice proposes a type-attestation alternative. The manufacturer might elect to attest to the Coast Guard, in writing, that a particular make, model, and series or modification of receiver complies with the MPS. The Coast Guard would list the receivers as having been attested to for the convenience of purchasers and vessel inspectors. However, inclusion

on the list would not constitute an approval by the Coast Guard.

Warranty or attestation would not be required for any receiver until June 1, 1981.

Two commenters recommended that the Coast Guard publish procedures for approving alternative devices. The Coast Guard does not intend to "approve" any of these devices. A receiver proposed as an alternative under the provisions of § 164.41(b)(3) would be evaluated against the requirements of the National Plan for Navigation. Since the receivers so proposed could vary widely, no specific procedure can be stipulated at this time. Requests would be handled on a case by case basis, using whatever procedure is appropriate to the particular device.

Several persons have complained to the Coast Guard that they have been unable to obtain copies of the National Plan for Navigation. That document has been revised and is available from the National Technical Information Service (NTIS), Springfield, VA 22161. The Government Accession Number is AD-A-052269.

Eight commenters complained about the lack of signal characteristic and test standards. The Coast Guard plans to publish LORAN-C signal characteristics. The RTCM is developing LORAN-C test standards. The proposed two year phase in period would allow time for all needed information to become available.

This proposal has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (43 FR 9582, March 8, 1978). A draft evaluation has been prepared and is included in the public docket.

In consideration of the foregoing, it is proposed to amend Part 164 of Chapter I of Title 33, Code of Federal Regulations as follows:

§ 164.30 [Amended]

1. By striking, in § 164.30, the section number "164.35" and inserting the section number "164.41" in place thereof.

2. By adding a new § 164.41 to read as follows:

§ 164.41 Equipment: Certain vessels.

(a) This section applies to vessels calling at ports in the continental U.S. or on the Gulf of Alaska, except—

(1) Vessels not engaged in commerce and owned or bareboat chartered and operated by the United States, by a state or its political subdivision, or by a foreign nation; and

(2) Vessels calling only at U.S. ports on the Great Lakes are not required to meet paragraph (b) of this section until 120 days after the day LORAN-C for that area is declared operational by the U.S. Coast Guard.

(b) Each vessel must have one of the following devices installed:

(1) A LORAN-C receiver meeting the requirements of paragraph (c) of this section.

(2) A continual update, satellite-based hybrid navigation receiver (i.e., satellite-bottom tracking, satellite-inertial, or satellite-Omega) meeting the standards contained in paragraph (d) of this section.

(3) A system that the Commandant finds meets the intent of the statements of availability, coverage, and accuracy for the U.S. Coastal Confluence Zone (CCZ) contained in the U.S. Department of Transportation National Plan for Navigation (Report No. DOT-TST-78-4 dated November 1977). A person desiring a finding by the Commandant under this subparagraph must submit a written request describing the receiver to: Commandant (G-W/73), U.S. Coast Guard, Washington, DC 20590. In addition to the description, the Commandant may request data and test results to establish whether or not the receiver meets the National Plan.

(c) Each LORAN-C receiver must meet the following:

(1) Be a Type I or II receiver as defined in Section 1.2(e) of Radio Technical Commission for Marine Services (RTCM) Paper 12-78/DO-100, entitled "Minimum Performance Standards (MPS) Marine LORAN-C Receiving Equipment."

NOTE.—This paper may be purchased from the Radio Technical Commission for Marine Services, P.O. Box 19087, Washington, DC 20036 [(202)—296-6610].

(2) Provide a separate digital data output as described in section 1.4(f) of the RTCM MPS. Resolution of the output data may not be more coarse than that displayed by the receiver. Data must be available whenever the receiver is tracking LORAN-C signals.

(3) After June 1, 1981, be accompanied by a manufacturer's warranty that, at time of manufacture or modification by the manufacturer, the receiver complied with the minimum performance standards contained in Section 1.4(f) and 2 of the Radio Technical Commission for Marine Services Paper 12-78/DO-100 as defined in Section 1 of that paper, unless the manufacturer attests to the Coast Guard, in writing, that a particular make, model, and series of receivers meets the minimum performance standards contained in Sections 1.4(f) and 2 of the RTCM Paper 12-78/DO-100, as defined in Section 1 of that paper.

NOTE.—A list of equipment which manufacturers have attested as being in compliance with this standard will be published periodically by the Coast Guard. The Coast Guard does not test or otherwise verify the performance of electronic navigation equipment, but publishes the listing solely as a matter of public convenience based on the representations of the manufacturer.

(d) Each hybrid satellite system must have—

(1) Automatic acquisition of satellite signals after initial operator settings have been entered;

(2) Position updates derived from satellite information obtained during each usable satellite pass; and

(3) A continual tracking complementary system that provides, in between satellite passes, position updates at intervals of one minute or less.

§ 164.53 [Amended]

3. By adding in § 164.53(b) the words "radio navigation receivers," after the word "radar," and before the word "gyrocompass,".

(Sec. 2, Pub. L. 95-474; R.S. 4417a, as amended by Sec. 5, Pub. L. 95-474 (46 U.S.C. 391a); 49 CFR 1.46(n)(4).)

Dated: January 16, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 79-2674 Filed 1-24-79; 8:45 am]